

Kenneth Miller
 Name
Hwy 84/285 bld 19350
 Address
Hernandez, NM 87532

FILED
 UNITED STATES DISTRICT COURT
 DISTRICT OF NEW MEXICO

2016 SEP 12 AM 8:51

CLERK-SANTA FE

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NEW MEXICO

Kenneth Miller, Plaintiff
 (Full Name)

CASE NO. CV 16-1013 KK
 (To be supplied by the Clerk)

v.

Robert Montoya Defendant(s)

CIVIL RIGHTS COMPLAINT
 PURSUANT TO 42 U.S.C. §1983

A. JURISDICTION

1) Kenneth Miller, is a citizen of US
 (Plaintiff) (State)
 who presently resides at Hwy 84/285 19350 Hernandez
 (Mailing address or place of confinement)
NM

2) Defendant Robert Montoya is a citizen of
 (Name of first defendant)
PO Box 360 Espanola NM 87532, and is employed as
 (City, State) At the time the claim(s)

(Position and title, if any)

alleged in this complaint arose, was this defendant acting under color of state law?

Yes No If your answer is "Yes", briefly explain:

- 3) Defendant Robert Montoya _____ is a citizen of
(Name of second defendant)
_____, and is employed as
(City, State) _____ · At the time the claim(s)
(Position and title, if any)
alleged in this complaint arose, was this defendant acting under color of state.
Yes No If your answer is "Yes", briefly explain:

(Use the back of this page to furnish the above information for additional defendants.)

- 4) Jurisdiction is invoked pursuant to 28 U.S.C. §1333(3), 42U.S.C. §1983. (If you wish to assert Jurisdiction under different or additional statutes, you may list them below.)

B. NATURE OF THE CASE

- 1) Briefly state the background of your case.

I gave Mr. Montoya a notarized copy of attached letter I abled Exhibits A^{and B}, stating my rights to the property, I am making mortgage payments on. Also please see purchase agreement Exhibit C. Mr. Montoya, after receiving these documents said, if he did not sell him back his building for \$1,000 that he would kill me. He made this statement in front of his grand daughter. Police report Exhibit D is also attached. -2- A couple other incidences jail an employee working for me who was putting up a fence (police report pending for second incident) continued on next page

Several time both Robert Montoya
came into my establishment when
I was not there and I returned
he was reading my business documents
and looking around. Later I put
a fence so he could not walk in the
back door of the building and that
is when he threatened my worker.

C. CAUSE OF ACTION

- 1) I allege that the following of my constitutional rights, privileges or immunities have been violated and that the following facts form the basis for my allegations: (If necessary, you may attach up to two additional pages (8 1/2" x 11") to explain any allegation or to list additional supporting facts.

A)(1) Count I:

1. Mr. Montoya threatened to kill me if I did not sell back his property
2. He violated my rights of ownership to property I am purchasing from him
3. Violated right to privacy when he walked into building w/out my permission
4. Threatened to jail an employee who was not breaking the law — told

(2) Supporting Facts: (Include all facts you consider important, including names of persons involved, places and dates. Describe exactly how each defendant is involved. State the facts clearly in your own words without citing legal authority or argument.)

the employee "I will have you
put in jail"

and told the employee that
I did not own this property
I was making payments on
and that he (Mr. Montoya) could
have me evicted any time
he wanted to. Told me the
next day "it is who you
know"

B)(1) Count II:

(2) Supporting Facts:

C)(1) Count III:

(2) Supporting Facts:

D) PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

1) Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to the conditions of your imprisonment?

Yes No If your answer is "YES", describe each lawsuit. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

a) Parties to previous lawsuit.

Plaintiffs: _____

Defendants: _____

b) Name of court and docket number:

c) Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?)

d) Issues raised: _____

- e) Approximate date of filing lawsuit: _____
- f) Approximate date of disposition: _____
- 2) I have previously sought informal or formal relief from the appropriate administrative officials regarding the acts complained of in Part C. Yes No If your answer is "Yes", briefly describe how relief was sought and the results. If your answer is "No," briefly explain why administrative relief was not sought.

E. REQUEST FOR RELIEF

- 1) I believe that I am entitled to the following relief:

Signature of Attorney (if any)

Signature of Petitioner

Attorney's full address and telephone number.

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is the plaintiff in the above action, that he has read the above complaint and that the information contained therein is true and correct. 28 U.S.C. Sec. 1746. 18 U.S.C. Sec. 1621.

Executed at _____ on _____ 20____.
(Location) (Date)

Kenneth M. Miller
(Signature)

E X 1

March 30, 16

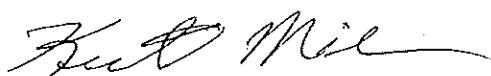
Robert Montoya
PO BOX 360
Espanola, NM 87532

Dear Robert,

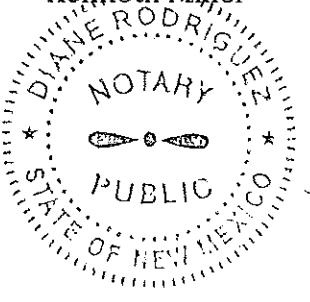
I Kenneth Miller, Highway 84/285, building 19350, in Hernandez am buying the land and building with no agreement to share well or mineral rights of this land. I Kenneth Miller am the soul buyer of property with an agreement from Robert Montoya. I Kenneth Miller came to an agreement in July 2015 to purchase the building and land. I Kenneth Miller do not agree to give no water rights or other mineral rights to this land to no one. Before I moved to this location Robert Montoya was paying anywhere from \$90-100 or more a month for utilities, but when I moved in he quit paying. He should still be paying this because of the use of the well. I Kenneth Miller do not agree to pay his share of the utilities. I Kenneth Miller am due back pay for utilities from Aug. 2015- April 2016 and every month there after in the amount of \$1, 000. I should receive \$100 a month by the 3rd of each month in cashiers check or money order. Mortgage check is attached to this letter. You have 10 days to respond or I Kenneth Miller will cut off all water use of my well.

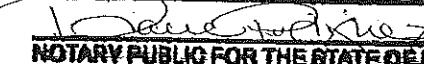
Sincerely,

Check # 3321678



Kenneth Miller



SUBSCRIBED AND SWEORN TO BEFORE ME
THIS 31 DAY OF MAR, 20 16
BY Kenneth Miller

NOTARY PUBLIC FOR THE STATE OF NEW
MEXICO, COUNTY OF LOS ALAMOS,
MY COMMISSION EXPIRES: 08/21/19

LAMB

Creating a better way.

Main Office
1200 Trinity Drive / P.O. Box 60
Los Alamos, NM 87544-0060
www.lamb.com / (505) 662-5171

Reference: [MJB/2 T-98921]

Remitter: Kenny's North Carolina BBQ, LLC
55 O' Go Wil
Santa Fe, NM 87506-0922

3321678

95-101/1070

March 31, 2016

For:

for mortgage--highway 84/285 bldg 19350 Hernandez

Pay:

***** One Thousand And 00/100 Dollars *****

To The
Order
Of:

*****Robert Montoya*****

\$1,000.00

Cashier's Check

- NOT NEGOTIABLE -

- CUSTOMER RECEIPT ONLY -

OCCURRENCE DATE(S) ON MM/DD/YY			DATE REPORTED MM/DD/YY			STATE DOCUMENT MEXICO CODE UNIFORM INCIDENT REPORT			NM0210000 8-574			PAGE 1 OF 3				
5/6/2016			5/10/2016			AGENCY / COUNTY RIO ARriba COUNTY SHERIFF			DIST. NO. 007	OPTIONAL USE (CASE NO., ETC.) SO-16-000548	BURGLARY FORCE NO F X	# UNITS ENT.				
TIME Unk	DAY Fr	TIME 0830	DAY TU	ADDRESS / LOCATION OF INCIDENT 19350 Hwy 84/285			CITY Hernandez	ZIP 87537	GANG REL. YES NO X	HATE/BIAS MOT. CODE						
OFFENSE	OFFENSE / INCIDENT Simple Assault			STATUTE OR ORDINANCE 30-3-1	FEL. MIS. ATT	COM	UCR CODE 13B	ACTIVITY CODE 13	LOCAT CODE 99	WEAPON CODE	OFFENDER(S) SUSPECTED OF USING ALCOH. DRUG COMB. UNK					
											X					
SUBJECTS (VICTIMS / SUSPECTS / PERSONS / BUSINESSES)	PERSON CODES G-PARENT/GUARDIAN W-WITNESS R-REPORTING PERSON			V-VICTIM C-CITED S-SUSPECT A-ARRESTED D-DECEASED M-MISSING PERSON/RUNAWAY	TYPE CODES I-INDIVIDUAL B-BUSINESS P-POLICE G-GOVERNMENT			F-FINANCIAL INST. O-OTHER S-SOCIETY/PUB. U-UNKNOWN	R-RELIGIOUS	INJURY CODES L-SEVERE LACERATIONS B-APPARENT BROKEN BONE H-POSSIBLE INTERNAL INJURY		T-LOSS OF TEETH M-APPARENT MAJOR INJURY O-OTHER MAJOR INJURY U-UNCONSCIOUS N-NONE				
	PERSON CODE R	TYPE CODE I	INJURY CODE N	NAME (LAST, FIRST, MIDDLE) Miller, Kenneth			SOCIAL SECURITY NO.			DOB	SEX M	WHT X	BLK	RACE ASIA IND UNK		
	STREET ADDRESS 19350 Hwy 84/285				RES. PHONE 505-500-0030			HEIGHT 600	WEIGHT 160	HAIR Blk	EYES Brn	ETHNICITY AM		AGG. ASS J.H.CODE		
	CITY Hernandez			STATE NM	ZIP 87537	BUS. PHONE			VIC. OFF. #	VIC. SUS. #	REL.	SUS. #	REL.	SUS. #	REL.	
	OCCUPATION			EMPLOYER / SCHOOL			EMPLOYER / SCHOOL ADDRESS						GANG AFFILIATION			
	ALIAS / NICKNAME				MARKS, SCARS, TATTOOS AND OR CLOTHING DESCRIPTION						ARMED WITH (CODE)			TYPE OF ARREST ON VIEW CITED CUST.		
	DRIVER'S LICENSE NO.		D.L. STATE NM	ARREST / CITATION NO.		F.B.I. NO.		S.I.D. NO.			NIC NO.			RES. STATUS RES. NON		
	PERSON CODE S	TYPE CODE I	INJURY CODE N	NAME (LAST, FIRST, MIDDLE) Montoya, Robert			SOCIAL SECURITY NO.			DOB	SEX M	WHT X	BLK	RACE ASIA IND UNK		
	STREET ADDRESS 19350 Hwy 84/285				RES. PHONE			HEIGHT	WEIGHT	HAIR	EYES	ETHNICITY		AGGASS / J.H.CODE		
	CITY			STATE	ZIP	BUS. PHONE			VIC. OFF. #	VIC. SUS. #	REL.	SUS. #	REL.	SUS. #	REL.	
OCCUPATION			EMPLOYER / SCHOOL			EMPLOYER / SCHOOL ADDRESS						GANG AFFILIATION				
ALIAS / NICKNAME				MARKS, SCARS, TATTOOS AND OR CLOTHING DESCRIPTION						ARMED WITH (CODE)			TYPE OF ARREST ON VIEW CITED CUST.			
DRIVER'S LICENSE NO.		D. L. STATE	ARREST / CITATION NO.		F.B.I. NO.		S.I.D. NO.			NIC NO.			RES. STATUS RES. NON			
PERSON CODE	TYPE CODE	INJURY CODE	NAME (LAST, FIRST, MIDDLE)			SOCIAL SECURITY NO.			DOB	SEX	WHT	BLK	RACE ASIA IND UNK			
STREET ADDRESS				RES. PHONE			HEIGHT	WEIGHT	HAIR	EYES	ETHNICITY		AGGASS / J.H.CODE			
CITY			STATE	ZIP	BUS. PHONE			VIC. OFF. #	VIC. SUS. #	REL.	SUS. #	REL.	SUS. #	REL.		
OCCUPATION			EMPLOYER / SCHOOL			EMPLOYER / SCHOOL ADDRESS						GANG AFFILIATION				
ALIAS / NICKNAME				MARKS, SCARS, TATTOOS, AND OR CLOTHING DESCRIPTION						ARMED WITH (CODE)			TYPE OF ARREST ON VIEW CITED CUST.			
DRIVER'S LICENSE NO.		D. L. STATE	ARREST / CITATION NO.		F.B.I. NO.		S.I.D. NO.			NIC NO.			RES. STATUS RES. NON			
VEHICLE STATUS 1-STOLEN 2-BURNED 3-REC. (STOLEN LOCALLY)		4-REC (STOLEN OTHER JURIS.) 5-SEIZED 6-ABANDONED		7-DAMAGED/VANDALIZED 8-SUSPECT'S VEHICLE 9-VICTIM'S VEHICLE		10-OTHER 11-EMBEZ 12-REPO.	VEH. TYPE	01-AIRPLANE 03-AUTOMOBILE 05-BUS	24-OTHER MOTOR VEH. 25-MOTOR HOMES 37-TRUCK (PICKUP)	39-WATERCRAFT 41-MOTORCYCLE 42-SNOWMOBILE	43-ATV 44-TRAILER					
YEAR	MAKE	MODEL	BODY STYLE		LICENSE NO.	LIC. YR.	LIC. ST.	TOP COLOR	BTM. COLOR	VALUE/DAMAGE EST.						
REGISTERED OWNER'S NAME (OR SAME AS SUBJ. NO.)				VEHICLE IDENTIFICATION NUMBER				DISTINGUISHING FEATURES / VISIBLE DAMAGE								
ADDRESS				TOW TO BY						NIC NO.						
AGENCY OPTIONAL USE				TOWED FROM			OWNER NOTIFIED			DATE RECOVERED		TIME RECOVERED				

PROPERTY	PROPERTY STATUS	RECOVERED	FOUND	BURNED	SAFEKEEPING				
	2-STOLEN & RECOVERED	5-EVIDENCE	8-COUNTERFEIT/FORGED	11-SEIZED	14-UNKNOWN				
	3-RECOVERED (STOLEN THIS JURIS)	6-LOST	9-DAMAGED/DESTROYED/VANDALIZED	12-USED IN CRIME	15-EMBEZZLED				
	PROPERTY TYPE	02-ALCOHOL 04-BICYCLES 05-CLOTHES/FURS 07-COMPUTER HARDWARE/SOFTWARE 08-CONSUMABLE GOODS 09-CREDIT/DEBIT CARDS 10-DRUGS/NARCOTICS 11-DRUG/NARCOTIC EQUIPMENT	12-FARM EQUIPMENT 13-FIREARMS 14-GAMBLING EQUIPMENT 15-HEAVY CONSTRUCTION/HEAVY EQUIP. 16-HOUSEHOLD GOODS 17-JEWLRY/PRECIOUS METALS 18-LIVESTOCK 9-MERCHANDISE	20-MONEY 21-NEGOTIABLE INSTRUMENTS 22-NON-NEGOTIABLE INSTRUMENTS 23-OFFICE EQUIPMENT 25-PURSES/HANDBAGS/WALLETS 26-RADIOS/TVs/VCRs 27-RECORDINGS-AUDIO/VIDEO 29-STRUCTURES-SINGLE OCCUPANCY	30-STRUCTURES-OTHER DWELLINGS 31-STRUCTURES-OTHER COMM/BUSINESS 32-STRUCTURES-INDUSTRIAL/MANUF. 33-STRUCTURES-PUBLIC/COMMUNITY 34-STRUCTURES-STORAGE 35-STRUCTURES-OTHER 36-TOOLS	40-SKIS/SKI EQUIP 77-OTHER 88-PENDING INVEN 99-SPECIAL CAT.			
	DRUG TYPE	A-CRACK B-COCAINA C-HASHISH	D-HEROIN E-MARIJUANA F-MORPHINE I-LSD	G-OPIUM H-OTHER NARCOTICS I-LSD	J-PCP K-OTHER HALLUCINOGENS L-AMPH./METHAM.	M-OTHER STIMULANTS N-BARBITURATES O-OTHER DEPRESSANTS			
	FIELD UNIT OF MEASURE	GM-GRAM KG-KILOGRAM ML-MILLILITER	OZ-OUNCE LB-POUND	GL-GALLON	NP-NO. PLANTS LT-LITER	FO-FLUID OUNCES DU-DOSAGE UNITS ML-			
	PROPERTY STATUS	PROPERTY TYPE	TYPE OF ITEM		MAKE / BRAND	MODEL	CALIBER	VALUE (EXCEPT DRUGS)	
	SUSPECTED DRUG TYPE	QUANTITY/UNIT OF MS	DESCRIPTION (COLOR, SIZE, FEATURES, ETC.)			SERIAL / OAN	DATE RECOV.	NIC NO.	
	PROPERTY STATUS	PROPERTY TYPE	TYPE OF ITEM		MAKE / BRAND	MODEL	CALIBER	VALUE (EXCEPT DRUGS)	
SUSPECTED DRUG TYPE	QUANTITY/UNIT OF MS	DESCRIPTION (COLOR, SIZE, FEATURES, ETC.)			SERIAL / OAN	DATE RECOV.	NIC NO.		
PROPERTY STATUS	PROPERTY TYPE	TYPE OF ITEM		MAKE / BRAND	MODEL	CALIBER	VALUE (EXCEPT DRUGS)		
SUSPECTED DRUG TYPE	QUANTITY/UNIT OF MS	DESCRIPTION (COLOR, SIZE, FEATURES, ETC.)			SERIAL / OAN	DATE RECOV.	NIC NO.		
	M.O. EVENT CODES: (AGENCY OPTIONAL USE)					TOTAL VALUE STOLEN	TOTAL VALUE REC.		
SYNOPSIS	Individual came into the Sheriff's Office to report a threat made by his landlord.								
NARRATIVE	On the date of May 10 th , 2016 at 0930 hours, while on regular patrol in a marked Rio Arriba County Sheriff's Office patrol unit, within the boundaries of Rio Arriba County, the State of New Mexico, wearing the patrol uniform of the Rio Arriba County Sheriff's Office displaying my badge of office, I was dispatched to the Rio Arriba Sheriff's Office in reference to a walk in report of a treat. I made contact with Kenneth Miller, owner of Kenny's Bar-B-Q, Mr. Miller reports that last week his landlord Robert Montoya came to the store front being purchased by Mr. Miller from Mr. Montoya and told him "If I don't get my \$1000 I will kill you". Mr. Miller after thinking about the incident feels he should report it to Law Enforcement. It appears that Mr. Miller in signing a contract to buy the "Montoya's Store" in Hernandez, signed an agreement to assume water and electric, not knowing that the home belonging to Mr. Montoya was also connected to the same utilities as the store front. When Mr. Miller shut off water at the main it also shut off water to Mr. Montoya's home and that is when Mr. Montoya confronted Mr. Miller. There was no specific treat of harm or death and Mr. Montoya did not show or imply a weapon. Mr. Miller was informed that this case would be listed as a misdemeanor and he said he did not want Mr. Montoya arrested or cited but wanted simply for the Sheriff's Office to be aware of the situation. Mr. Miller was also directed to the Rio Arriba Magistrate Court for assistance with the civil side of this incident involving the buyer's contract and the utilities in question.								
CERT. / STATUS	I WILL PROSECUTE/TESTIFY SHOULD THE OFFENDER BE ARRESTED*	YES	NO	I UNDERSTAND IT IS A CRIMINAL OFFENSE TO FILE A FALSE REPORT TO POLICE*				COMPLAINANT / VICTIM CERTIFICATION SIGNATURE X	DATE
REPORTING OFFICER	RR Sanches	RANK 	RANK LT	I.D. NO. RA4	DATE 5/10/16	DETECTIVE / FOLLOW UP OFFICER / REFERRED TO		I.D. NO.	DATE
ASSISTING OFFICER		RANK	I.D. NO.	DATE	PROCESSED BY	DATE	DATA ENTRY PERSON	DATE	
APPROVING OFFICER	Martin Teyano / M.T.	RANK US	I.D. NO. RA2	DATE 5/10/16	INCIDENT STATUS UNFOUNDED CLEARED BY ARREST EXCEPTIONAL CLEAR		EXCEPT CODE	A DEADLY OF OFFENDER D-DEATH/INJURED C-EXTRADITION DEC D-DW/REF TO COOP E-EXC/EXC/EXC/EXC P-POST N-NOT APPLICABLE	DATE
AGENCY OPTIONAL USE (DISTRIBUTION, OTHER OFFICERS, ETC.)					CASES CLEARED BY THIS ARREST				

624

July 10, 2015

This Document is prepared for the sale of property belonging to Robert Montoya and Rose Ellen Montoya.

Robert Montoya and Rose Ellen Montoya have entered into an agreement for the sale Of property in El Guache New Mexico. The property, consists of a 2000 square foot building plus refrigerators and compressor and shelving in building. The amount of property that the building is situated on is three quarters of an acre included in the total price.

The total estimated amount of \$200,000 assessed at a finance rate of 5.5% will be figured

On an amortization table for the extent of time based at \$1,000 per month.

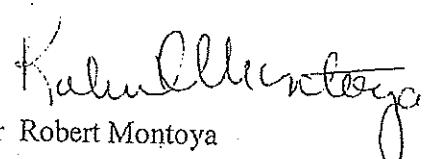
Any extra payments made in addition to monthly rate will be deducted from total amount. Buyer will provide ingress and egress until final payment.

A survey will be enacted upon completion of payments for said Property.

Monthly payment will be made by Kenny Miller on or about the first of each month, or an agreed day with Mr. Miller

Payment will be made on agreed date with no leeway. Missed payments cannot be tolerated. Foreclosure will result after first missed payment.


Buyer


Seller Robert Montoya

Buyer

Seller Rose Ellen Montoya

Bldg 19350
Hwy 84/285
Heen Andez N.M.
87537
753-4277